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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,174	12/22/2003	Timothy J. Blenke	KCC 4931 (K-C 18,579)	7750

321 7590 07/12/2006

SENNIGER POWERS  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER

JACKSON, MONIQUE R

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/743,174	<b>Applicant(s)</b> BLENKE ET AL.	
	<b>Examiner</b> Monique R. Jackson	<b>Art Unit</b> 1773	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18, 20, 21, 23-39, 41, 43, 44, 46-62, 64, 66, 67, 69-85, 87, 89, 90 and 92 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/06</u> . | 6) <input type="checkbox"/> Other: ____.  |

**Continuation of Disposition of Claims: Claims pending in the application are 1-16,18,20,21,23-39,41,43,44,46-62,64,66,67,69-85,87,89,90 and 92.**

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### **DETAILED ACTION**

1. The response filed 4/26/06 has been entered. Claims 1-16, 18, 20, 21, 23-39, 41, 43, 44, 46-62, 64, 66, 67, 69-85, 87, 89, 90 and 92 are pending in the application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

3. Claims 1-16, 18, 21, 23-39, 41, 44, 46-62, 64, 67, 69-85, 87, 90 and 92 are rejected under 35 U.S.C. 103(a) as being anticipated unpatentable over Zhou et al '069 or Zhou et al '538 in view of Wang et al (USPN 4,713,068), or Jackson et al (USPN 6,835,678) or Franklin et al (USPN 6,890,630) or Shah et al (USPN 5,536,563) for the reasons recited in the prior office action and restated below.

The teachings of Zhou et al '069 and Zhou et al '538 were discussed in the prior office action and though both references teach that the two substrates to be bonded and utilized in the absorbent article may include various thermoplastic materials and specifically recite polypropylene examples, the references do not teach the instantly claimed substrate materials. However, polyethylene, polyester and polyamides including nylon are known functionally equivalent thermoplastics to polypropylene, specifically in terms of their use as substrate materials in disposable absorbent articles as taught by Wang et al (Co. 9, line 21-Col. 10, line 5), Jackson et al (Col. 22, lines 38-41), Franklin et al (Col. 11, lines 1-11) or Shah et al (Claim 25) and hence one having ordinary skill in the art at the time of the invention would have been motivated to utilize the instantly claimed functionally equivalent thermoplastic substrate materials based on the desired end use of the laminated structure.

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4. Claims 20, 43, 66 and 89 are rejected under 35 U.S.C. 103(a) as being anticipated unpatentable over Zhou et al '069 or Zhou et al '538 in view of Rearick et al (US 2002/0064639 or Jordan et al (US 2004/0127123) for the reasons recited in the prior office action and restated below.

The teachings of Zhou et al '069 and Zhou et al '538 were discussed in the prior office action and though both references teach that the two substrates to be bonded and utilized in the absorbent article may include various thermoplastic materials and specifically recite polypropylene examples, the references do not teach the use of polylactic acid as the substrate material. However, polylactic acid is a known substitute material for use in disposable absorbent articles as taught by Rearick et al or Jordan et al, wherein it is further noted that polylactic acid is a preferred material, particularly over polyolefins, because it is biodegradable. Hence one having ordinary skill in the art at time of the invention would have been motivated to utilize polylactic acid as the substrate material in the disposable absorbent article taught by Zhou et al '069 or Zhou et al '538 given its biodegradable properties and known use in the art.

#### ***Response to Arguments***

5. Applicant's arguments filed 4/26/06 have been considered but are not persuasive. First it is noted that the Applicant appears to argue the references separately as opposed to the combinations as presented. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Further, the Applicant argues that one having ordinary skill in the art would not look to the

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secondary references in terms of suitable thermoplastic materials and that there is no motivation or suggestion to combine the references. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Applicant admits that the primary references specifically teach an example comprising a polypropylene/polypropylene laminate but argue that one skilled in the art would not be motivated to utilize the instantly claimed thermoplastic materials as the thermoplastic substrates broadly disclosed by the primary reference or in place of the polypropylene in the specific example. However, the Examiner respectfully disagrees and notes that not only are the claimed thermoplastics known equivalents in the art as supported by the cited references, but the Applicants themselves note that in paragraph 0024 of the instant specification that the claimed thermoplastic polymers are "commonly utilized in forming laminated absorbent products" and actually recite at paragraph 0027 at a preferred laminate includes first and second thermoplastic materials "that comprise the same polymer, such as polypropylene". Therefore, the Examiner maintains that one having ordinary skill in the art at the time of the invention would have been motivated to utilize the instantly claimed thermoplastic materials as the broadly discussed thermoplastic substrate materials or in place of the polypropylene substrates in the example taught by the primary references, considering all are known thermoplastic materials utilized in the art and known equivalents in the art to

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polypropylene, particularly polyethylene. The Examiner further notes that at the time of filing, the Applicant did not recognize any unexpected results or preferred performance with respect to the claimed thermoplastic materials over polypropylene, and in fact, suggest the use of polypropylene in a preferred embodiment.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

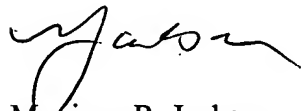
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R. Jackson whose telephone number is 571-272-1508. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Monique R. Jackson  
Primary Examiner  
Technology Center 1700  
July 10, 2006